

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5645 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANHARBHAI SOMABHAI AHIR

Versus

SHANTILAL B CHAUHAN

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Appearance:

MR AD MITHANI for Petitioners

MR BHARAT J SHELAT for Respondent No. 1

None present for other Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/02/97

ORAL JUDGMENT

Having heard the learned counsel for the parties,  
I do not find it to be a fit case where this Court should interfere. The reasons are as follows.

2. The challenge is made by the petitioners by this Special Civil Application to the order of the Assistant Collector, Choryasi Prant, Surat, dated 2nd

August 1984, under which the matter was remanded to the Mamlatdar, Palsana to the effect that by making fresh investigation in the case and by giving opportunity of representing to the parties in the interest of justice, to take decision of both the cases.

3. The dispute relates to the right of way through block No.347. The block No.340 is owned and possessed by respondent No.1. The block No.347 has been purchased by the petitioners. After purchase of land of block No.347, the petitioners, as contended by respondent No.1, has closed down his way of coming and going. The concerned parties approached the Mamlatdar, but the said authority, after examining the petitioners, passed the order in their favour. The Mamlatdar proceeded on the ground that the administrative roads are not being shown in the maps of the village. An inspection has also been stated to be made by the Mamlatdar, and on making inspection thereof, he did not find any passage of way claimed by the petitioners. However, the Assistant Collector, taking into consideration the totality of the facts of this case, considered it necessary in the interest of parties for deciding the matter afresh after making investigations and giving an opportunity of presenting their cases to all the parties. Another aspect has been taken by the Assistant Collector that the respondent No.1, herein, has also filed application before the Mamlatdar for opening of way which is pending. In these circumstances, it was considered to be more reasonable to hear the parties for both the suit applications in the case together and to take decision afresh. It is just and reasonable order which has been passed by the Assistant Collector, Choryasi Prant, Surat, to which no exception can be taken. I do not find any illegality or error apparent on the face of the order, impugned in this Special Civil Application. It is only a case where remand has been ordered and nothing has been decided finally by the Assistant Collector. It is in fact, an interlocutory order. In such orders, normally, this Court should not interfere, sitting under Article 227 of the Constitution. It is a settled law that exercise of jurisdiction under Article 227 of the Constitution by this Court is not warranted where there appears to be no failure of justice to the parties, herein the petitioners. Reference in this respect may have to the two decisions of the Hon'ble Supreme Court in the case of A.M. Allison v. B.L. Sen, reported in AIR 1957 SC 227, and in the case of Balvant Rai v. M.N. Nagrashna, reported in AIR 1960 SC 407. This Court, under Article 227 of the Constitution, cannot assume unlimited prerogative to correct all species of hardship or wrong

decisions. This prerogative is only limited or restricted to the cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless the Court interferes. The present is not a case, which falls in the aforesaid category. As observed earlier, the Assistant Collector, has not decided the matter finally, that is the rights of the parties were not adjudicated finally. Only the matter has been remanded so that both the applications may be decided together after giving full opportunity to both the parties.

4. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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(sunil)